IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 513 (MS) OF 2006

Suraj Chauhan,
S/o Shri Raj Singh,
R/0 6, Nathanpur, Jagriti Vihar,
Police Station Raiwala,
District-Dehradun. .....Petitioner.

Versus

1. District Judge,
   Dehradun.
2. Smt. Pushpa Prasad,
   W/o Major General Kamta Prasad,
   R/o 8-B, Laxmi Road, Dehradun,
   Through her son and Power of Attorney
   Kamal Prasad, R/o 08-B, Laxmi Road,
   Dehradun. .....Respondents.
3. Vikram Singh,
   S/o Shri Narain Singh,
   R/o Village Nehrugram,
   District-Dehradun.
4. Smt. Kusumlata,
   D/o Shri Mohan Lal,
   R/o 75, Rajpur Road, Dehradun,
   District-Dehradun.
5. Siraj Javed,
   S/o Shri Javed Kamal,
   R/o 75, Rajpur Road, Dehradun.
   District Dehradun.
6. Virndra Kumar,
   S/o late Shri Jogdhyan,

R/o Niranjanpur, Dehradun,

District-Dehradun. .....Petitioners.

Mr. Ramji Srivastava, Advocate for the petitioner.
Learned Standing Counsel for the respondent no.1.

Dated: 08.05.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 8th July, 2005 passed by the District Judge, Dehradun.

Briefly stated, a suit No. 180 of 2004 Smt. Pushpa Prasad Vs. Suraj Chauhan and others was filed by the respondent no. 2 in the Court of Civil Judge (Senior Division), Dehradun for cancellation of the sale deed dated 10th September, 2003. Further prayer was made for a permanent injunction. During the course of the proceeding, respondent no. 2 has filed an application Paper No. 6C2 for temporary injunction supported by the affidavit of the respondent no. 2 (paper no. 7C2) before the trial Court. The trial Court vide its order dated 24.03.2004 issued notice to the defendants on the application (paper no. 6C2) for temporary injunction and fixed the date of 06.04.2004 for disposal of the application (paper no. 6C2) for temporary injunction.

Against the said order dated 24.03.2004, respondent no. 2 preferred a Misc. Civil Appeal No. 43 of 2004 Smt. Pushpa Prasad Vs. Suraj Chauhan and others before District Judge, Dehradun on 20.04.2004. The District Judge, Dehradun decided the appeal vide its order dated 08.07.2005 directing the parties to maintain status quo.

Counsel for the petitioner has made two grievances:-

A) that the order passed by the Civil Judge is cryptic one and has not been passed in accordance with Order XXXIX Rule 3 of C.P.C.

B) the appeal was not maintainable before the District Judge and as such the order of status quo could not have been passed.

I have perused the order passed by the District Judge. As will appear from the order passed by the Civil Judge that he has only issued notice and the injunction application is still pending for disposal.

As will appear from the order passed by the District Judge that he has directed to dispose of the application for injunction on merits in the meantime parties have been directed to maintain status quo.

Counsel for the petitioner has submitted that the appellate Court has no jurisdiction to pass the order as the appeal was not maintainable.

In ***Uttar Pradesh Jal Nigam, Dehradun v. IInd A.D.J., Dehradun 1998 (2) ARC Page 623,*** it has been observed as under:-

"12. It would thus appear from the ratioeination of the aforestate decision that an order declining to grant injunction and issuing notices to defendants under Rule 3, Order XXXIX, is not appealable under Order XLIII Rule 1 (r) of the Code but when the exparte ad-interim injunction is refused illegally, the Court can, in exercise of its power of superintendence under Section 115 of the Code, grant ad-interim injunction. It may be recalled that Order XLIII, Rule 1 (r) provides for an appeal against an 'order' under Rule 1, Rule 2, Rule 2-A, Rule 4 or Rule 10 of Order XXXIX. The word 'order' here means the formal expression of any decision of a civil Court which is not a decree-Section 2 (4) of the Code. It cannot be gain-said that an order issuing notice to the defendant on an application for temporary injunction under Rule 1 or Rule 2 and declining to grant exparte ad-interim

injunction is not the formal expression of the decision of the Court on the application for grant of temporary injunction."

In view of the above, liberty is given to the petitioner to move a fresh application before the District Judge along with the certified copy of the order for reconsideration of the order passed by the District Judge. If such an application is filed the same shall be considered in accordance with law.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

08.05.2006
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